

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

IN RE: NATIONAL PRESCRIPTION :

OPIATE LITIGATION :

MDL No. 2804

Hon. Judge Dan A. Polster

This document relates to: :

St. Bernard Parish Government v. Purdue :

Pharma L.P. et al, 1:18-op-45756; :

Summers County Commission v. Rite Aid :

of Maryland, Inc., 1:18-op-45226 :

TOPRX LLC'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

TopRx, LLC ("TopRx") files this motion to dismiss TopRx from the following actions with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b) and the Court's April 6, 2023 Order: (1) *St. Bernard Parish Government v. Purdue Pharma L.P. et al.*, 1:18-op-45756; and (2) *Summers County Commission v. Rite Aid of Maryland, Inc.*, 1:18-op-45226.

On January 3, 2023, the Court issued an Order requiring Defendants to identify any case where Plaintiffs had failed to properly serve a complaint or fact sheet. *See* Doc. 4801. On January 30, 2023 and pursuant to the Court's January 3, 2023 Order, TopRx filed a list identifying all plaintiff-subdivisions that named TopRx in an MDL case, but where the Plaintiff(s): (1) did not serve a Plaintiff Fact Sheet to the Plaintiff Fact Sheet Repository; and/or (2) did not effect timely service of process in accordance within the 90-day period for service provided by Federal Rule of Civil Procedure 4. *See* Doc. 4838. Among those cases were the cases subject to this Motion and filed by St. Bernard Parish Government and the Summers County Commission. The PEC's Status Report likewise identified both cases as lacking service of the complaint. *See* Doc. 4977 at Ex. A.

Subsequently, the Court issued an Order on April 6, 2023, that extended the time period to serve Defendants to 45 days from the date of the Order. *See* Doc. 4986 at 5. Plaintiffs were required to make service by **May 22, 2023**. In its April 6, 2023 Order, the Court stated that “failure to comply with this order will result in *dismissal with prejudice* pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute,” and “any defendant may move for dismissal with prejudice of any claim against them filed by a plaintiff that fails to comply with this Order.” *Id.* at 5-6 (emphasis in original).

TopRx has two cases where Plaintiffs have not perfected service of process within the 45-day period required by the Court’s April 6, 2023 Order: (1) *St. Bernard Parish Government v. Purdue Pharma L.P. et al.*, 1:18-op-45756; and (2) *Summers County Commission v. Rite Aid of Maryland, Inc.*, 1:18-op-45226. By failing to serve their complaints, these Plaintiffs have failed to timely prosecute their claims against TopRx. *See id.*; Fed. R. Civ. P. 41(b); *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 365-67 (6th Cir. 1997) (discussing district courts’ authority to dismiss cases *sua sponte* for failure to prosecute and affirming dismissal with prejudice). Accordingly, the Court should dismiss TopRx with prejudice in both actions.

Dated: June 14, 2023

Respectfully submitted,

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_____ :

PROPOSED ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of TOPRX LLC's MOTION TO DISMISS FOR FAILURE TO PROSECUTE, it is hereby ordered that TopRX LLC is **DISMISSED** with prejudice from the following two cases:

(1) *St. Bernard Parish Government v. Purdue Pharma L.P. et al.*, 1:18-op-45756; and (2) *Summers County Commission v. Rite Aid of Maryland, Inc.*, 1:18-op-45226.

J.